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No. 16-369

In the

Supreme Court of the United States

COUNTY OF LOS ANGELES, CHRISTOPHER CONLEY AND JENNIFER PEDERSON,

Petitioners,

v.

ANGEL MENDEZ AND JENNIFER LYNN GARCIA,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICUS CURIAE* THE RUTHERFORD INSTITUTE IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS CURIAE[1]

The Rutherford Institute is a nonprofit civil liberties organization headquartered in Charlottesville, Virginia. Founded in 1982 by its President, John W. Whitehead, the Institute specializes in providing *pro bono* legal representation to individuals whose civil liberties are threatened and in educating the public about constitutional and human rights issues.

As part of its mission, The Rutherford Institute resists the erosion of fundamental civil liberties that many would ignore in a desire to increase the power and authority of law enforcement. The Rutherford Institute believes that according ever increasing power and authority to law enforcement only creates a false sense of security while sacrificing unconscionable intrusions upon the private lives of private citizens.

The Rutherford Institute is interested in this case because it is committed to ensuring the continued vitality of the Fourth Amendment. Reversal of the Ninth Circuit's decision would be tantamount to holding that law enforcement officials are entirely immune from their own culpable conduct, even in circumstances when the victims of that conduct are acknowledged by all to be without fault.

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[1] No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No one other than *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. A letter from Petitioners consenting to the filing of this amicus brief has been filed with the Clerk of the Court. Attached is consent from Respondents.

ARGUMENT

I. Law Enforcement Officers May Be Held Liable Under Traditional Proximate Cause Standards

On the morning of October 1, 2010, the Mendezes were confronted in their own home by two sheriff's deputies of the Los Angeles County Police Department. But the Mendezes had done no wrong; the policemen had targeted the wrong people. As Mr. Mendez moved a toy gun he uses to shoot pests, the sheriffs fired 15 shots, shattering Mr. Mendez's leg and striking his pregnant wife in the back.

That the traditional tort law standard of proximate cause applies to 42 U.S.C. § 1983 claims is, by now, hardly controversial. This Court has explained quite simply that a § 1983 plaintiff pursues "a species of tort liability." *Imbler v. Pachtman*, 424 U.S. 409, 417 (1976); *accord*, e.g., *Carey v. Piphus*, 435 U.S. 247, 258 (1978); *Malley v. Briggs*, 475 U.S. 335, 345 n.7 (1986). Both Petitioners and Respondents agree on this much.

The Petitioners' focus on the Ninth Circuit's application of its "provocation rule." But the Court also explained that "even without relying on . . . [the] provocation theory, the deputies are liable for the shooting under *basic notions of proximate cause*." *Mendez v. County of Los Angeles*, 815 F.3d 1178, 1194 (9th Cir. 2016) (emphasis added).

"Proximate cause is often explicated in terms of foreseeability or the scope of the risk created by the predicate conduct." *Paroline v. United States*, 134 S. Ct. 1710, 1719 (2014) (citing Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 29, p. 493 (2005)). Under that standard, law enforcement officials are free from liability only "in sit-

uations where the causal link between [their] conduct and result is so attenuated that the consequence is more aptly described as mere fortuity." *Id.* at 1719 (2014).

As Respondents argue, it is hardly unforeseeable that a person might react violently when an unknown and unidentified person barges into his home without saying who he or she is. This Court's decision in *District of Columbia v. Heller* specifically contemplates "handgun possession in the home . . . for the lawful purpose of self-defense" and emphasized "the importance of the lawful defense of self, family, and property" in the home. 554 U.S. 570, 573 (2008). Decades ago, Justice Jackson explained similarly:

> When a woman sees a strange man, in plain clothes, prying up her bedroom window and climbing in, her natural impulse would be to shoot . . . . But an officer seeing a gun being drawn on him might shoot first.

McDonald v. United States, 335 U.S. 451, 460–61, 69 (1948) (Jackson, J., concurring). Accordingly, it is common sense that if a police officer enters into the home of a private citizen unannounced, violence may ensue.

In claiming that the circumstances that led to the shooting of the Mendezes were not foreseeable, Petitioners repeat that the Mendez tragedy was a "tragic happenstance." Pet'r's Br. 2, 56. It was certainly a tragedy. But it was a foreseeable tragedy.

II. The Mendez tragedy was a foreseeable consequence of avoidable police practices.

These types of situations have occurred before, which belies Petitioners' claim that the sequence of events that led to the Mendezes being shot is unforeseeable.

In 2006, Kathryn Johnston, an elderly Georgia woman who lived in a dangerous neighborhood, assumed her home was under attack by armed invaders when three law enforcement officials entered her home without identifying themselves as police officers. In an attempt to defend herself she fired a shot into the ceiling. Johnson, an octogenarian, ended up being shot and killed by the officers.[2]

In 2008, Tracy Ingle, a 40-year-old former stonemason assumed he too was under attack when he heard the sound of a battering ram at his door. He pulled out a non-working handgun in an attempt to scare of the would-be intruders. By the time he realized the intruders were actually police officers attempting to execute a search warrant, it was too late. Ingle was shot above his knee shattering his thigh.[3]

Petitioners further claim that Mr. Mendez's act of holding a BB gun as the deputies entered his home was a superseding act that broke the causal chain. Not so.

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[2] Patrick Jonsson, *After Atlanta Raid Tragedy*, New Scrutiny of Police Tactics, Christian Science Monitor (Nov. 29, 2006), http://www.csmonitor.com/2006/1129/p03s03-usec.html

[3] David Koon, *Shot In The Dark*, Arkansas Times (April 24, 2008), http://www.arktimes.com/arkansas/shot-in-the-dark/Content?oid=948430

In *Bodine v. Warwick*, 72 F.3d 393 (3d Cir. 1995) (Alito, J.), the court illustrated the type of factual circumstances that would justify such a conclusion that the citizen's conduct was a superseding cause:

> Suppose that three police officers go to a suspect's house to execute an arrest warrant and that they improperly enter without knocking and announcing their presence. Once inside, they encounter the suspect, identify themselves, show him the warrant, and tell him that they are placing him under arrest. The suspect, however, breaks away, shoots and kills two of the officers, and is preparing to shoot the third officer when that officer disarms the suspect and in the process injures him. Is the third officer necessarily liable for the harm caused to the suspect on the theory that the illegal entry without knocking and announcing rendered any subsequent use of force unlawful? The obvious answer is "no." The suspect's conduct would constitute a "superseding" cause

Id. at 400 (citations omitted). This factual scenario is of course predicated on the suspect *knowing* that he was confronting the authorities acting, whether appropriately or not, in their capacity of authorities. In the absence of facts like these, a private citizen's act of defending him or herself can hardly be said to be a superseding cause.

Petitioners add that the Mendezes injuries were not in the "scope of risk" that the Fourth Amendment's proscription against illegal search and seizure

protects. They suggest that the officers may be held liable for the injuries the Mendezes suffered for the unlawful search and seizure of their home, but not the injuries they suffered as a result of the unreasonable use of force. But this Court has already cautioned that common law proximate cause standards are not to be so rigidly applied that they undermine the very purpose of § 1983 . *See Carey v. Piphus*, 435 U.S. 247, 258 (1978) (expressing skepticism "that common-law tort rules of damages will provide a complete solution to the damages issue in every § 1983 case" and explaining that "the purpose of § 1983 would be defeated if injuries caused by the deprivation of constitutional rights went uncompensated simply because the common law does not recognize an analogous cause of action"). When law enforcement officials invade a person's home prompting a violent reaction in self-defense, they should not be able to rest on the fact that they are required to make split-second decisions in violent encounters. They cannot claim the benefit of a reasonable misperception while denying it to others.

This case is not about the undeniably difficult decisions law enforcement officials must make during unpredictable encounters with potentially dangerous individuals. This case is about what the officers can reasonably expect if they barge into a private home unannounced.

CONCLUSION

The decision of the United States Court of Appeals for the Ninth Circuit should be affirmed.

Respectfully submitted.

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